

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

CHARLES MAUTI

v.

JOHN SCUNCIO, ET AL.

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CA No. 2008-54S

**NOTICE OF APPEAL OF MAGISTRATE-JUDGE'S MEMORANDUM AND ORDER
GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Pursuant to 28 U.S.C. § 636(b) and Local Rule Cv 72, Plaintiff Charles Mauti hereby gives notice of his appeal from the Memorandum and Order dated July 23, 2010.

To the extent the Memorandum and Order dealt only with the issue of electronically-stored information ("ESI"), and completely and without explanation failed to address the *substance* of Plaintiff's Motion to Compel Production of Documents, it is clearly erroneous and contrary to law.

The treatment of the issue of ESI by the Memorandum and Order is also clearly erroneous and contrary to law for, *inter alia*, the following reasons:

- It purports to preserve the ability of Defendants to withhold responsive material on grounds of privilege twenty months after their responses to the Requests were due, in effect relieving the Defendants of any consequences from their conscious refusal to conduct *any* search of Town computers in a timely fashion;
- It fails to address restoration of available back-up tapes of Town computer equipment, which should be searched in light of clear evidence that responsive documents were deleted from computers used by Defendants Scuncio and Baruti; and
- It fails to include in the search other electronic equipment used by Defendants, such as personal or home computers, fax machines, PDAs and/or "smart" phones.

Respectfully submitted,

Charles Mauti
By his Attorney,

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Certification

I hereby certify that on August 6, 2010, I sent a copy of the foregoing document to the following counsel of record, via the Court's ECF system:

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